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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,772	06/30/2003	Wade L. Hennessey	6783P101	2185
8791 7590 04/25/2008 BLAKELY SOKOLOFF TAYLOR & ZAFMAN 1279 OAKMEAD PARKWAY SUNNYVALE, CA 94085-4040				
EXAMINER LEVITAN, DMITRY				
ART UNIT 2616		PAPER NUMBER		
MAIL DATE 04/25/2008		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/611,772

Applicant(s)

HENNESSEY ET AL.

Examiner

Dmitry Levitan

Art Unit

2616

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-10,12-17 and 19-21 is/are rejected.
- 7) ☒ Claim(s) 3,4,11 and 18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Amendment, filed 3/15/08, has been entered. Claims 1-21 remain pending.

Specification

1. In light of Applicant's amendment, the objection to the disclosure has been withdrawn

Claim Rejections - 35 USC § 101

In light of Applicant's amendment, claims 8-14 are rejection under 35 U.S.C. 101 has been withdrawn.

Claim Rejections - 35 USC § 112

2. Claims 10, 13, 17 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 10 and 17 recite the limitation "the MAC address" in lines 3 of claims 10 and 17. There is insufficient antecedent basis for this limitation in the claim.

Claims 13 and 20 recite the limitation "the first public address" in lines 3 of claims 13 and 20. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

3. Claims 1, 5, 6, 8, 12, 13 15, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goeller (US 7,200,658) in view of Admitted Prior Art (current application, Background).

4. Regarding claims 1, 5, 8, 12, 15 and 19 Goeller substantially teaches the limitations of the claims:

A method a program and an apparatus for determining a network topology in a network (identifying a client computer location in a packet network by an application server, as disclosed on 2:12-25), comprising:

performing a tracerouting operation to obtain a traceroute from a first client to a server, wherein a traceroute is a map of the path through which a packet travels between the first client and the server, including addresses of the routers through which the packet travels (performing traceroute command from a client computer to the known server and collecting the path information 2:25-50);

sending the traceroute to the server from the first client (transmitting the traceroute information to the Internet server 2:46-49); and

using the traceroute at the server to build a router graph, wherein the router graph represents the topology of the network (identifying the hops from the client to the server, wherein the identified hops represent the topology of network, as disclosed on 3:17-35).

Goeller does not teach using his method, or system in peer-to-peer network environment.

Admitted Prior Art teaches importance of topology discovery in a peer-to-peer network for fast peer-to-peer content delivery, as disclosed in [0005]-[0007] of current application.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the system of Goeller in the field of peer-to-peer networks of Admitted Prior Art to utilize the topology discovery of the system in fast developing peer-to-peer networks.

In addition, regarding claims 8 and 15, Goeller teaches his method implementation as software loaded into client and server computers and comprising mechanisms/means to perform the functions as described above.

5. Regarding claims 6, 13 and 20 Goeller teaches using the first public hop to the client to classify the clients into a member of group, as shown on Fig. 5 and 5:56-6:32 and therefore using the same router identified by the public address.

6. Claims 2, 9 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goeller in view of Admitted Prior Art.

Goeller in view of Admitted Prior Art substantially teaches the limitations of claims 2, 9 and 16 (see claims 1, 8 and 15 rejection above).

Goeller in view of Admitted Prior Art does not teach performing tracerouting operation from client to client and sending this information to the server.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add performing tracerouting operation from client to client and sending this information to the server to the system of Goeller in view of Admitted Prior Art to improve the topology discovery by utilizing the same method, tracerouting, to provide additional topology information for the mapping of the network.

7. Claims 7, 14 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goeller in view of Admitted Prior Art.

Goeller in view of Admitted Prior Art substantially teaches the limitations of claims 7, 14 and 21 (see claims 1, 8 and 15 rejection above), in addition Goeller teaches the importance of dynamic characteristic of the network 1:36-46.

Goeller in view of Admitted Prior Art does not teach removing information from the routing graph if the information has not been validated for specified period of time.

Official notice is taken that removing information from the routing graph if the information has not been validated for specified period of time is well known and expected in the art.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add removing information from the routing graph if the information has not been validated for specified period of time to the system of Goeller in view of Admitted Prior Art to remove old routing information from the dynamic system.

Allowable Subject Matter

8. Claims 3, 4, 11 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. Claims 10 and 17 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

10. Applicant's arguments filed 3/15/08 have been fully considered but they are not persuasive.

On page 11 of the Response, Applicant argues that the portion of Background, cited in the claims 1, 8 and 15 rejection, does not constitute Prior Art.

Examiner respectfully disagrees.

Peer-to-peer environment, disclosed on [0004], wherein "once a peer has received a file, the peer becomes a potential server" is clearly indicated as Prior Art, because this environment is created by "some companies" (work of another).

On pages 12 and 13 of the Response, Applicant argues that claims 1, 8 and 15 are allowable, because Goeller does not teach using his method in peer-to-peer environment.

Examiner respectfully disagrees.

Goeller clearly teaches all steps of the claimed method except using this method in peer-to-peer environment, as disclosed in the claims 1, 8 and 15 rejection.

The Supreme Court opinion in KSR case (04-1350, U.S. Apr. 30, 2007), rejected the rigid application of the test, requiring "teaching, suggesting or motivation" in the prior art which would lead one of the ordinary skills in the art to combine the prior art teachings.

In current case, applying a known technique (Goeller discovery of network topology by using traceroute) to a known environment (peer-to-peer networks) yield predictable results, as disclosed in the claims 1, 8 and 15 rejection above.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dmitry Levitan whose telephone number is (571) 272-3093. The examiner can normally be reached on 8:30 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynn Feild can be reached on (571) 272-2092. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Dmitry Levitan
Primary Examiner
Art Unit 2616

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